



Jennifer Schoeneck  
Director, Economic Development  
201 N. Broadway, Escondido, CA 92025  
Phone: 760-839-4587

## NOTICE OF REQUEST FOR PROPOSALS

April 29, 2024

### Re: Notice of Request for Proposals (“RFP”) No. 24-29 – Cell Tower Lease Consultant

Notice is hereby given that the City of Escondido, a California municipal corporation (“City”), is soliciting proposals from qualified consultants for as-needed cellular tower consultant services, including small cells (“Project”). The desired consultant should have experience providing services including but not limited to, fair market value evaluations, property assessments, carrier negotiations, site location and future expansion assessments, ground space leasing, cell tower site selection and cellular site feasibility audits. Please see Section E of this RFP for a schedule of deadlines

Prospective consultants must submit one proposal to Jennifer Schoeneck at [Jennifer.Schoeneck@escondido.gov](mailto:Jennifer.Schoeneck@escondido.gov) and Pedro Cardenas at [Pedro.Cardenas@escondido.gov](mailto:Pedro.Cardenas@escondido.gov) **no later than 5 p.m. on May 10, 2024** (“Submission Deadline”). Any proposals received after the Submission Deadline will not be accepted.

Questions or comments concerning this RFP may be submitted via e-mail to Pedro Cardenas, Management Analyst II at [Pedro.Cardenas@escondido.gov](mailto:Pedro.Cardenas@escondido.gov) **no later than 5 p.m. on May 3, 2024** (“Questions Deadline”). Any questions or comments regarding this RFP received after the Questions Deadline will be disregarded. Emails concerning this RFP should state the following in the subject line: “RFP No. 24-29 – Cell Tower Lease Consultant.” Any communication regarding or relating to this RFP with any City employee or official other than the Director of Economic Development or Management Analyst is strictly prohibited. A summary of questions from prospective Consultants and City responses will be posted on the City’s website at <https://www.escondido.org/purchasing> by 5 p.m. on May 8, 2024.

Each proposal shall be in accordance with specifications, instructions, and information contained in this RFP. The City reserves the right to reject any or all proposals for any reason it deems necessary, to waive defects or irregularities in any proposal, and to accept the proposal deemed the most advantageous to the City. This RFP does not commit the City to award a contract or to pay any costs incurred in the preparation of a response to this request

Sincerely,

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Jennifer Schoeneck  
Director of Economic Development  
City of Escondido

## **A. General**

The City of Escondido is located in north San Diego County, approximately 30 miles north of the City of San Diego, California. Escondido is an established community incorporated on October 8, 1888 under the general laws of the State of California. The City's current population is approximately 152,200.

The City of Escondido is a full-service city that operates under a City Council/City Manager form of government. Day-to-day activities of the City are carried out under the direction of the City Manager. The City provides the following services to its citizens: Police, Fire, Water, Wastewater, Streets, Planning, Engineering, Building, and Community Services.

The consultant awarded the contract ("Consultant") will provide the City with Cell Tower Leasing Services for the Project. Within 20 calendar days of the City's notice of award of the Project, the Consultant shall enter into a Consulting Services Agreement in substantially the same form as the City's standard Consulting Service Agreement ("Agreement"), which is attached to this RFP as Exhibit 1 and incorporated herein by this reference.

## **B. Project Description**

The City of Escondido invites qualified consultants to submit proposals for Cell Tower Lease services. This project will also include a comprehensive analysis of the City's Cell Tower Portfolio. Interested consultants must have recent cell tower lease experience, which includes but is not limited to fair market value evaluations, property assessments, carrier negotiations, site location and future expansion assessments, ground space leasing, cell tower site selection and cellular site feasibility audits.

## **C. Scope of Services and Deliverables**

The City is seeking a consultant to perform an analysis of the City's Real Property Portfolio and suggest strategic insights for optimizing lease terms and fostering community benefits. The consultant's services shall include, but are not limited to, the following:

1. Initial assessment of the City's Cell Tower Portfolio
  - a. A report which evaluates City's existing Cell Tower Sites and Leasing Program and make recommendations to maximize market competitiveness and future leasing opportunities.
2. Cellular Rooftop/Tower Lease Review and Negotiation
  - a. As-needed, review the City's current rooftop/tower leases on site to identify current financial, liability, and compliance issues, as well as future development and disposition concerns that may need to be addressed in the Leases going forward. Consultant will assist in negotiating new or renewal lease contracts with cell service providers/tenants and coordinate with the City Attorney's Office as needed.
3. Cellular Rooftop/Tower Site Evaluation

- a. As-needed by the City, Consultant may be required to evaluate the current rooftop/tower sites (approximately 81 locations) and surrounding areas to determine factors that include, but shall not be limited to, the following:
  - i. The type of telecommunications equipment currently located at the respective site; The current value of such equipment to tenant based upon wireless coverage/data needs in immediate area; and potential necessity for future equipment upgrades or premises expansion;
  - ii. Characteristics of the respective site, as applicable, including carrier name, site classification, latitude and longitude data, FCC ASR Number, FAA Study Number, date installed/constructed, structure height, ground elevation, compound size; wireless carrier spectrum information; immediate population densities and wireless subscriber demographics that the site serves;
  - iii. Comparable existing or proposed rooftop, structure (water tower, flagpole, billboard, etc.) or tower sites in the immediate area that are currently or are scheduled to be use for comparable telecommunications equipment; and an assessment of the characteristics of such existing or proposed wireless facilities and their impact on the respective Site; and
  - iv. Determination of short-term and long-term viability of the respective Site due to technological advancement and resulting wireless site redundancy, telecommunications industry corporate restructuring and mergers; and contraction or expansion of the subject wireless network in the immediate subject areas.
4. Cellular Lease Evaluation
  - a. Upon request by the City, Consultant may be required to present, based upon a Lease and Tower Site Evaluation and comparable available rent data, a valuation of what the current rent range should be for the occupancy and use of the respective sites. Consultant shall also provide the City general consultation regarding both immediate value of the respective site to the applicable tenant, as well as long-term value due to the expansion or contraction of the utility of the respective Site.
5. Cellular Site Lease Negotiation
  - a. Using information gained in the Lease and Tower Site Evaluation, consultant shall assist the City in the negotiation of new or renewed leases for the sites prior to the expiry of lease terms with current tenants.
6. Consultation Services
  - a. Upon request by the City, may require Consultant to provide an analysis of the above-described evaluations, scheduled time(s) for follow-up conference call(s) that shall be for the purposes of discussion of such evaluations and the information provided therein and to assist the City's counsel in the negotiation of new, renewal or amended lease contracts at the site(s).
7. Litigation
  - a. Upon request by the City, the City may require Consultant to provide documentation and testimony in support of City litigation involving cell tower tenants.

**D. Right to Submitted Material**

This RFP does not commit the City of Escondido to award a contract, to pay any costs incurred in the preparation of a proposal or contract, or to procure or contract for, any services. The City reserves the right to accept or reject any or all proposals received as a result of this RFP, or to amend, cancel (in part or in whole) this RFP if it is in the City's best interest to do so. All proposals, reports and data submitted to the City shall become the property of the City of Escondido and may not be returned.

**E. Proposal Deadlines and Schedule**

The following is an estimated schedule relating to this Project:

<b>Activity</b>	<b>Date</b>
Questions Deadline	May 3, 2024
Response to Questions Released	May 8, 2024
Proposal Submission Deadline	May 10, 2024
Staff Review of Proposals	May 13-17 , 2024
Award of Contract	May 31 , 2024

Note: The City reserves the right to make modifications to the estimated schedule outlined above.

**F. Proposal Content**

Prospective consultants are responsible for preparing and timely submitting an effective, clear, and concise proposal. Proposals must be limited to **ten pages**. Each proposal shall demonstrate the qualifications, competence, and capacity of the prospective consultant to perform the services described within the timeframe in the table above, and in conformity with the requirements of this RFP.

By submitting a proposal in response to this RFP, prospective consultants certify that they take no exceptions to the terms and requirements of this RFP, including the terms of the City's form Consulting Agreement (Exhibit 1).

To be considered responsive, proposals must contain the following information in the order listed:

1. Cover Letter: A cover letter introducing the company and the individual who act as the company's Project manager and provide company's SAM registration number.
2. Qualifications and Experience:
  - a. A list of qualifications and experience for each person who will be assigned by the prospective consultant to work on the Project;
  - b. A list of at least three different projects previously completed by the prospective consultant that are similar in size and scope to the Project.
3. Rate Sheet and Total Fee for Project: Rate sheets shall include, but not be limited to:
  - a. Hourly wages for all staff that will be assigned by the prospective consultant and sub-consultant to work on the Project;
  - b. Estimate of the total number of hours to complete the Project; and
  - c. Total Not-to-Exceed fee of the prospective consultant's proposal, which shall be calculated based the hourly rates of staff assigned to the Project, and the estimated number of hours to complete the Project. Any incidental costs and reimbursable costs shall be included in the total fee.
4. Description of each task and Contractor deliverables for completion of the Project meeting

the City's requirements and deadlines.

The successful consultant's proposal submitted in response to this RFP may become part of the resulting Consulting Agreement (Exhibit 1). **Any proposed waiver, or change to the resulting Consulting Agreement (Exhibit 1) must be clearly identified in Prospective consultant's proposal.** All contracts, and any addenda thereto, shall be subject to the City's sole discretion and approval. The requirements and service standards of this RFP and the responses of the successful consultant will be incorporated by reference into the resulting agreement regarding the Project. The successful consultant shall enter into a contract within 20 calendar days of the City's notice of award in substantially the same form as the Agreement (Exhibit 1).

### **G. Selection Process**

The contract resulting from this RFP will be awarded to the most responsive and responsible consultant whose proposal conforms to the requirements of this RFP and is considered to be the most advantageous to the City, taking into consideration not just the proposal price, but also the evaluation criteria set forth in this RFP. The City will act as the sole judge of information submitted in response to this RFP. The City reserves the right to: (i) request additional information or clarification of any submitted information, (ii) cancel or amend this RFP, including the proposal evaluation process, at any time, and (iii) not enter into any contract resulting from this RFP and issue similar solicitations in the future.

Evaluation Criteria will be based on the following:

1. Background, consultant team and experience in similar organizations, and three references of the consultant team.	35 Points
2. Overall proposal/response	50 Points
3. Value	15 Points
Total	100 Points

### **H. General Conditions**

PLEASE READ CAREFULLY. THE FOLLOWING GENERAL TERMS AND CONDITIONS ARE A PART OF ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS RFP AND THE RESULTING CONTRACT.

This RFP as advertised, the specification requirements detailed in this RFP (including the following General Provisions), and documents on file with the City pertaining to the services sought by this RFP are subject to all provisions of the Ordinances of the City of Escondido. Each prospective consultant submitting a response to this RFP warrants that the submitted proposal is genuine and non-collusive, or made in the interest of any person, firm, or corporation. A non-collusion declaration shall be properly completed and returned with the proposal documents. This declaration will not be counted towards the overall page count.

In submitting a proposal in response to this RFP, each prospective consultant agrees to the

following general terms and conditions:

1. **Public Information:** The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal in response to this RFP indicates the prospective consultant's acceptance of all terms and conditions contained in this RFP, including all exhibits and attachments hereto, unless clearly and specifically stated otherwise.
2. **Confidential Information:** Any information deemed confidential or proprietary should be clearly identified by the prospective consultant as such. Information identified as confidential or proprietary will be protected and treated with confidentiality to the extent permitted by applicable local, state, and federal law.
3. **Addendums:** The City reserves the right to amend, alter, or revoke this RFP at any time. Any modifications, clarification, or additions will be distributed via email as an addendum.
4. **Proposal Preparation Cost:** The City is not obligated to reimburse any prospective consultant for expenses incurred in preparing proposals in response to this RFP. All Prospective consultants shall bear their own costs, fees, and expenses incurred in preparing proposals in response to this RFP.
5. **Withdrawal of Proposal:** A prospective consultant may modify or withdraw their proposal, either personally or by written request via email, at any time prior to the Submission Deadline. Such requests should be directed to Jennifer Schoeneck, Director of Economic Development and Pedro Cardenas, Management Analyst..
6. **Inaccuracies or Misinterpretations:** Subject to the City's sole discretion, the City may terminate a prospective consultant from the RFP process or terminate any agreement with the Prospective consultant if the City determines that said Prospective consultant has: (i) made a material misstatement, (ii) made a material misrepresentation, or (iii) provided materially inaccurate information.
7. **Optional Items:** Prospective consultants may elect to provide recommendations and pricing for optional items. Pricing for optional items shall not be included in the minimum requirements pricing.
8. **Business License:** The successful consultant shall be required to obtain a City of Escondido Business License pursuant to the terms of Exhibit 1.
9. **Signature:** All proposals shall be signed in the name of the prospective consultant and shall bear the original signature in longhand of the persons duly authorized to sign the proposal. Obligations assumed by such signature shall be fulfilled.
10. **Right to Reject Proposal:** The City reserves the right to reject any or all proposals, to waive any non-material irregularities or information in any proposal, and to accept or reject any items or combination of items. The City is not obligated to explain or justify its selection or rejection of any Prospective consultant. All proposals submitted in response to this RFP shall immediately become property of the City.
11. **Right to Conduct Personal Interviews:** The City reserves the right to conduct personal

interviews or require oral presentations of any or all prospective consultants prior to selection.

12. Right to Request Additional Information: Prospective consultants shall furnish additional information as the City may reasonably require. The City reserves the right to investigate the qualifications of prospective consultants as it deems appropriate.
13. Right to Determine Financial Responsibility and Viability: The City reserves the right to request information pertaining to the financial stability of a prospective consultant to allow an appraisal of a prospective consultant's current financial condition.
14. Understanding the Services to be Performed: By submitting a proposal in response to this RFP, each prospective consultant certifies that they have fully read and understand this RFP and have full knowledge of the scope, nature, quantity, and quality of services to be performed. Each prospective consultant understands that, if successful, they will be required to enter into a written contract in substantially the same form as Exhibit 1.
15. Award of Contract: Proposals submitted in response to this RFP will be analyzed and the contract awarded to the responsible prospective consultant whose proposal conforms to this RFP and is considered to be the most advantageous to the City, taking into consideration not just the proposal price, but also the evaluation criteria set forth in this RFP. If the prospective consultant does not execute a contract in substantially the same form as Exhibit 1 within 20 days after notification of award, the City may, subject to its sole discretion, (i) give notice to the Prospective consultant of the City's intent to select from the remaining Prospective consultants or (ii) issue a new RFP for the services.
16. Contract Funding: The City's funding of any agreement resulting from this RFP shall be on a fiscal year basis and is subject to annual appropriations. Prospective consultant acknowledges that the City is a municipal corporation, is precluded by the State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this RFP shall constitute an obligation of future legislative bodies of the City or State to appropriate funds for any agreement resulting from this RFP. Accordingly, prospective consultants acknowledge and agree that the funding for any agreement resulting from this RFP shall be contingent upon appropriation of funds.
17. City Provisions to Prevail: The terms of this RFP and the terms of any agreement resulting from this RFP shall govern the services. Any standard terms and conditions of the successful consultant shall not be acceptable to the City unless expressly agreed to by the City by separate document. The City reserves the right to reject a proposal containing unacceptable conditions as non-responsive as a condition of evaluation or award of the proposal.
18. Equal Employment Opportunity: The consultant awarded the project shall comply with all equal employment opportunity provisions of federal, state, and local non-discrimination laws, orders, regulations and guidelines as may be applicable to the consultant and be in effect during the performance of any agreement resulting from this RFP.
19. Consulting Agreement: Consultants submitting a proposal in response to this RFP shall be prepared to use the City's standard contract form (Exhibit 1) rather than its own contract form. Services may not commence until Agreement for services is executed.

20. Prospective Consultant's Invoices: Invoices shall be prepared and submitted to the City Manager's Office, ATTN: Pedro Cardenas, 201 N. Broadway, Escondido, CA 92025 or via email to pcardenas@escondido.org. Invoices shall be submitted on a monthly basis and contain the following information: Invoices should include all applicable sales or other taxes, and shall be remitted to appropriate agencies on the City's behalf. All payments made pursuant to this contract are not assignable and shall only be made payable to the seller.
21. Payment Terms: The City's payment terms are Net 30 days from date of invoice. No pre-payment or partial up front down payment will be made for any services or equipment. The time period allowed for payment, as indicated on the face hereof or offered by quote, bid, or proposal shall commence upon receipt of Prospective consultant's invoice or upon receipt of the goods or services, whichever is later.
22. Insurance Requirements: The successful consultant must have insurance in accordance with the requirements listed in Exhibit 1.
23. Public Agency Clause: It is intended that other public agencies (e.g., city districts, public authorities, municipal utilities, public school districts and other political subdivisions or public corporations of California) shall have the option to participate in any award made as a result of this solicitation. The City shall incur no financial responsibility for their order placement and payments to the successful consultant. This option shall not be considered in proposal evaluation. State whether said option is granted:

\_\_\_\_\_

YES

\_\_\_\_\_

NO



**NONCOLLUSION DECLARATION**

TO BE EXECUTED BY PROSPECTIVE CONSULTANT AND SUBMITTED WITH PROPOSAL

The undersigned declares:

The foregoing proposal submitted in response to the City of Escondido's Request for Proposals No. 24-29 – Cell Tower Lease Consultant Services is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The prospective consultant has not directly or indirectly induced or solicited any other prospective consultant to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any prospective consultant or anyone else to put in a sham proposal, or to refrain from submitting a proposal. The prospective consultant has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the prospective consultant or any other prospective consultant, or to fix any overhead, profit, or cost element of proposal price, or of that of any other prospective consultant. All statements contained in the proposal are true. The prospective consultant has not, directly or indirectly, submitted their proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

Each individual executing this declaration on behalf of a prospective consultant that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that they have full power to execute, and does execute, this declaration on behalf of the prospective consultant.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_.  
Date

\_\_\_\_\_  
Signature  
Title \_\_\_\_\_  
Of \_\_\_\_\_

\_\_\_\_\_  
Signature  
Title \_\_\_\_\_  
Of \_\_\_\_\_

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

City of Escondido  
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MICHAEL R. MCGUINNESS, City Attorney

By: \_\_\_\_\_

# EXHIBIT 1



## CITY OF ESCONDIDO CONSULTING AGREEMENT

This Consulting Agreement (“Agreement”) is made and entered into as of the last signature date set forth below (“Effective Date”),

Between: CITY OF ESCONDIDO  
a California municipal corporation  
201 N. Broadway  
Escondido, CA 92025  
Attn: Jennifer Schoeneck  
760-839-4587  
("CITY")

And: [Name]  
[Entity Type: e.g., “a California corporation”]  
[Street address]  
[City, state, zip code]  
Attn: [name of contact]  
[Telephone number]  
("CONSULTANT").

(The CITY and CONSULTANT each may be referred to herein as a “Party” and collectively as the “Parties.”)

WHEREAS, the CITY has determined that it is in the CITY’s best interest to retain the professional services of a consultant to provide Cell Tower Lease services;

WHEREAS, CONSULTANT is considered competent to perform the necessary professional services for the CITY; and

WHEREAS, the CITY and CONSULTANT desire to enter into this Agreement for the performance of the Services described herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, and the mutual benefits derived therefrom, the Parties hereby agree as follows:

1. Description of Services. CONSULTANT shall furnish all of the Services described in the Scope of Work, which is attached to this Agreement as Attachment “A” and incorporated herein by this reference (“Services”).
2. Compensation. In exchange for CONSULTANT’s completion of the Services, the CITY shall pay, and CONSULTANT shall accept in full, an amount not to exceed the sum of [\$Dollar Amount].

CONSULTANT shall be compensated only for performance of the Services described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent.

3. Performance. CONSULTANT shall faithfully perform the Services in a proficient manner, to the satisfaction of the CITY, and in accord with the terms of this Agreement. CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other information furnished by CONSULTANT pursuant to this Agreement, except that CONSULTANT shall not be responsible for the accuracy of information supplied by the CITY.
4. Personnel. The performance of the Services by certain professionals is significant to the CITY. As such, CONSULTANT shall only assign the persons listed on Attachment "B", attached to this Agreement and incorporated herein by this reference ("Personnel List"), to perform the Services. CONSULTANT shall not add or remove persons from the Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.
5. Termination. The Parties may mutually terminate this Agreement through a writing signed by both Parties. The CITY may terminate this Agreement for any reason upon providing CONSULTANT with 10 days' advance written notice. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by CONSULTANT, then CONSULTANT shall be compensated based on the work satisfactorily performed at the time of such termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the Services.
6. City Property. All original documents, drawings, electronic media, and other materials prepared by CONSULTANT pursuant to this Agreement immediately become the exclusive property of the CITY, and shall not be used by CONSULTANT for any other purpose without the CITY's prior written consent.
7. Insurance Requirements.
  - a. CONSULTANT shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services, and the results of such work, by CONSULTANT, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:
    - (1) *Commercial General Liability.* Insurance Services Office ("ISO") Form CG 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.
    - (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY's Risk and Safety Division.
    - (3) *Workers' Compensation.* Worker's Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

- (4) *Professional Liability (Errors and Omissions)*. Professional Liability (Errors and Omissions) appropriate to CONSULTANT's profession, with limits no less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate.
  - (5) If CONSULTANT maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONSULTANT.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *Acceptability of Insurers*. Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-: FSC VII, or as approved by the CITY.
  - (2) *Additional Insured Status*. Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used. The Automobile Liability endorsement shall be at least as broad as ISO Form CA 20 01.
  - (3) *Primary Coverage*. CONSULTANT's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
  - (4) *Notice of Cancellation*. Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
  - (5) *Subcontractors*. If applicable, CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONSULTANT shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
  - (6) *Waiver of Subrogation*. CONSULTANT hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONSULTANT, its agents, representatives, employees, and subcontractors.
  - (7) *Self-Insurance*. CONSULTANT may, with the CITY's prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONSULTANT shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONSULTANT's (i) net worth and (ii) reserves for payment of claims of liability against CONSULTANT are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. CONSULTANT's utilization of self-insurance shall not in any way limit the liabilities assumed by CONSULTANT pursuant to this Agreement.

(8) *Self-Insured Retentions.* Self-insured retentions must be declared to and approved by the CITY.

- c. *Verification of Coverage.* At the time CONSULTANT executes this Agreement, CONSULTANT shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.
- d. *Special Risks or Circumstances.* The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- e. *No Limitation of Obligations.* The insurance requirements in this Agreement, including the types and limits of insurance coverage CONSULTANT must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.
- f. Failure to comply with any of the insurance requirements in this Agreement, including, but not limited to, a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. In the event that CONSULTANT fails to comply with any such insurance requirements in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i) immediately terminate this Agreement; or (ii) order CONSULTANT to stop work under this Agreement and/or withhold any payment that becomes due to CONSULTANT until CONSULTANT demonstrates compliance with the insurance requirements in this Agreement.

8. Indemnification, Duty to Defend, and Hold Harmless.

- a. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with CONSULTANT's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the sole negligence or willful misconduct of the CITY.
- b. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all Claims caused by, arising under, or resulting from any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any work performed pursuant to this Agreement.
- c. All terms and provisions within this Section 8 shall survive the termination of this Agreement.

9. Anti-Assignment Clause. Because the CITY has relied on the particular skills of CONSULTANT in entering into this Agreement, CONSULTANT shall not assign, delegate, subcontract, or otherwise transfer any duty or right under this Agreement, including as to any portion of the Services, without the CITY's prior written consent. Any purported assignment, delegation, subcontract, or other transfer made without the CITY's consent shall be void and ineffective. Unless CONSULTANT

assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY's prior written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.

10. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.
11. Independent Contractor. CONSULTANT is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
12. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONSULTANT.
13. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONSULTANT concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.
14. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
15. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.
16. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
17. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.
18. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.
19. Notice. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and the CITY and CONSULTANT shall promptly provide the other Party with notice of any changes to such contact information.
20. Business License. CONSULTANT shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.
21. Compliance with Laws, Permits, and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations,

rules, and other legal requirements in effect during the term of this Agreement. CONSULTANT shall obtain any and all permits, licenses, and other authorizations necessary to perform the Services. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

22. Prevailing Wages. If applicable, pursuant to California Labor Code section 1770 et seq., CONSULTANT agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the applicable "General Prevailing Wage Determination" approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at <http://www.dir.ca.gov/oprl/dprevwagedetermination.htm> and incorporated into this Agreement by this reference. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
23. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONSULTANT represents and warrants that all of its employees and the employees of any subcontractor retained by CONSULTANT who perform any of the Services under this Agreement, are and will be authorized to perform the Services in full compliance with the IRCA. CONSULTANT affirms that as a licensed contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will perform the Services. CONSULTANT agrees to comply with the IRCA before commencing any Services, and continuously throughout the performance of the Services and the term of this Agreement.
24. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)



IN WITNESS WHEREOF, this Agreement is executed by the Parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO

Date: \_\_\_\_\_

\_\_\_\_\_  
Jennifer Schoeneck, Director  
of Economic Development

[CONSULTANT COMPANY NAME]

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Title (please print)

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY  
MICHAEL R. MCGUINNESS, CITY ATTORNEY

BY: \_\_\_\_\_

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES.

# ATTACHMENT “A”

## Scope of Work

### A. General

*This section should include a general statement about the purpose/objective of the contract, including what is being done under the contract and who is doing it.*

### B. Location

*This section should include the location(s) where the contract will be performed.*

### C. Services

*This section should describe the services the Consultant is to provide to the City, dividing the services into separate tasks if applicable.*

### D. Scheduling

*This section should describe when the services should be performed, including any related scheduling requirements.*

### E. Contract Price and Payment Terms

*This section should state the contract price, what is included or not included within the contract price, and the terms and schedule for any payments.*

### F. Term

*This section should provide the time frame for the entire project or term of the contract. If possible, provide the starting and completion date.*

### G. Other

*Some contracts may include unique requirements or provisions that do not fall within the above general categories (e.g., license/permit requirements, warranties, reference and incorporation of technical specifications or other documents). Any of these unique requirements/provisions should be listed here, or delete this section if not applicable.*

## **ATTACHMENT “B”**

### Personnel List

Pursuant to Section 4 of the Agreement, CONSULTANT shall only assign performance of Services to persons listed below.

1. [Name, Title, Email Address, Company]; and
2. [Name, Title, Email Address, Company].

CONSULTANT shall not add or remove persons from this Personnel List without the City’s prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City’s prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City’s prior written consent.

Acknowledged by:

Date: \_\_\_\_\_

\_\_\_\_\_  
[CONSULTANT Name/Title]